completed 10 years as a supervisor, will be required to re-enter the program to participate in the supervisory program.

The Firm Element requires that each member and member organization conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed amendments to Rule 341A will require members and member organizations to additionally focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, address such training needs in the Firm Element training plan.

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(c)(3) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has proposed this rule change in order to enhance the established continuing education program for registered persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR-Amex–98–08 and should be submitted by April 2, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that the proposed rule change is consistent with the provisions of Section 6(c)(3)(B) of the Act,[6] which makes it the responsibility of an exchange to prescribe standards of training, experience, and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act, which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standards of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the Exchange's proposed rule change is an appropriate means of maintaining and reinforcing the initial qualification standards required of a registered person and will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element throughout their securities industry careers.[7]

The Commission therefore finds good cause for approving the proposed rule change (SR–Amex–98–08) prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Amex–98–08) be, and hereby is, approved. The rule change shall become effective on July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

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[4] 15 U.S.C. § 78f(c)(3).

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. §§ 78f(c)(3)(B).

[7] These amendments proposed by the Amex regarding continuing education are also being uniformly adopted by some of the other SRO Council members. The analogous proposals of the CBOE, MSRB, NASD and NYSE were approved by the Commission on March 3, 1998. *See* Securities Exchange Act Release No.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.3–30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39725; File No. SR–CBOE–98–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Allocation Procedures

March 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 22, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 23, 1998, the CBOE filed a technical amendment to the filing, clarifying that the Exchange's Board of Directors had approved the proposed rule change in February 1997 (Amendment No. 1).

On February 12, 1998, the CBOE filed Amendment No. 2 to the proposal, to delete CBOE

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a rule to codify the Exchange's process for allocating securities to market-maker trading crowds and designated primary market-makers (''DPMs'').

The text of the proposed rule change is available at the Office of Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Board of Directors has delegated to the Exchange's Allocation Committee and Special Product Assignment Committee the authority to allocate the securities traded on the Exchange. Each allocation is made to either a market-maker trading crowd or to a DPM. The purpose of the proposed rule change is to codify the Exchange's allocation process in new CBOE Rule 8.95, ''Allocation of Securities and Location of Trading Crowds and DPMs'' [4]

CBOE Rule 8.95 is proposed to consist of seven subparagraphs, (a) through (g), and to contain two interpretations.

Proposed CBOE Rule 8.95(a) provides that the Allocation Committee shall be responsible for determining for each equity option class traded on the Exchange (i) Whether the option class should be a trading crowd or to a DPM and (ii) which trading crowd DPM should be allocated the option class. Similarly, proposed CBOE Rule 8.95(a) provides that the Special Product Assignment Committee shall be responsible for determining for each security traded on the Exchange other than an equity option (i) whether the security should be allocated to a trading crowd or to a DPM and (ii) which trading crowd or DPM should be allocated the security. Securities other than equity options that are traded on the Exchange include index options and securities traded pursuant to Chapter XXX of the Exchange's Rules, such as structured products.

Proposed CBOE Rule 8.95(a) further provides that the Allocation Committee shall be responsible for determining the location on the Exchange's trading floor of each trading crowd, each DPM, and each security traded on the Exchange. For example, this provision permits the Allocation Committee to place a large trading crowd or DPM operation in a trading floor location that is large enough to accommodate the crowd or DPM. As another example, if a DPM operated as a DPM at more than one trading station, this provision permits the Allocation Committee to determine the station, and the location within each station, at which the securities allocated to the DPM will trade.

Proposed CBOE Rule 8.95(b) describes the criteria that may be considered by the Allocation Committee and Special Product Assignment Committee in making allocation determinations and by the Allocation Committee in making location determinations. The factors to be considered may include, but are not limited to, any one or more of the following: performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, environment in which the security will be traded, expressed preferences of issuers, and recommendations of other Exchange committees.

The following are some examples of the many ways in which these criteria may be applied. For example, in considering performance, the appropriate Allocation Committee (*i.e.*, the Allocation Committee or Special Product Assignment Committee, as applicable) might look at the market performance ranking of the applicable trading crowds or DPMs, as established by market performance reviews that are conducted by the Exchange's Market Performance Committees and Modified Trading System (''MTS'') Appointments Committee.[5] In considering volume, the appropriate Allocation Committee might look at the anticipated trading volume of the security and the trading volume attributable to the applicable trading crowds or DPMs in determining which trading crowds or DPMs would be best able to handle the additional volume. Similarly, in considering capacity, operational factors, and efficiency, the appropriate Allocation Committee might look to criteria such as the number of market-makers or DPM personnel, the ability to process order flow, and the amount of trading crowd or DPM capital in determining which trading crowds or DPMs would be best able to handle additional securities. In considering market performance commitments, the appropriate Allocation Committee might look at the pledges a trading crowd or DPM has made with respect to how narrow its bid-ask spreads will be and the number of contracts for which it will honor its disseminated market quotations beyond what is required by the Exchange's Rules. In considering competitiveness, the appropriate Allocation Committee might look at percentage of volume attributable to a trading crowd or DPM in allocated securities that are traded on more than one exchange. In considering the environment in which the security will be traded, the appropriate Allocation Committee might seek a proportionate distribution of securities between the market-maker system and the DPM system and across individual trading crowds and DPMs. Also, in considering expressed preferences of issuers, the appropriate Allocation Committee might give consideration to the views of the issuer of a security traded pursuant to Chapter XXX with respect to the allocation of that security or to the licenser of an index on which an index option is based with respect to the allocation of that index option. Similarly, the appropriate Allocation Committee might give consideration to the recommendations of other Exchange committees, particularly those that

Rules 8.80(a) and 8.80(b)(7) and to insert an inadvertently omitted part of the Federal Register notice. *See* Letter from Arthur Reinstein, Assistant General Counsel, CBOE, to Joshua Kans, Attorney, Division of Market Regulation (''Division''), Commission, dated February 12, 1998.

On March 4, 1998, the CBOE filed Amendment No. 3 to the proposal, clarifying the basis for deleting CBOE Rule 8.80(b)(7). The amendment also noted that the CBOE is in the process of comprehensively amending CBOE Rule 8.80. *See* Letter from Arthur Reinstein, CBOE, to Joshua Kans, Division, Commission, dated March 4, 1998.

[4] On the effective date of the proposed rule change, the Exchange will delete existing CBOE Rules 8.80(a) and 8.80(b)(7). *See* Amendment Nos. 2 and 3, *supra* note 3.

[5] The Exchange has three committees that perform market performance functions, including the evaluation of market performance. The Exchange's Market Performance Committee performs market performance functions with respect to all trading crowds, market-makers (other than DPMs), and floor brokers that trade in securities other than DJX, NDX, OEX, and SPX index options; the Index Market Performance Committee performs market performance functions with respect to the trading crowds, market-makers (other than DPMs), and floor brokers that trade DJX, NDX, OEX, and SPX index options; and the MTS Appointments Committee performs market performance functions with respect to all DPMs.

evaluate trading crowd and DPM market performance.

Proposed CBOE Rule 8.95(c) provides that that appropriate Allocation Committee may remove an allocation and reallocate the applicable security during the first six months following its allocation to a trading crowd or DPM if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The Allocation Committees typically request that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. As described above, these commitments may relate to pledges to keep bid-ask spreads within a particular width or to make disseminated quotations firm for a designated number of contracts beyond what is required by Exchange Rules. Proposed CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met and gives trading crowds and DPMs incentive to abide by these commitments. Following the initial six months period after an allocation is made, all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.80, and other Exchange rules to take remedial action for failure to satisfy minimum market performance standards.

Proposed CBOE Rule 8.95(c) also provides that the appropriate Allocation Committee may change an allocation determination, and that the appropriate Allocation Committee may change a location determination, if the appropriate Allocation Committee concludes that doing so is in the best interest of the Exchange based on operational factors or efficiency. For example, if due to market conditions the trading volume in a security greatly increased over a very short time frame and the trading crowd or DPM allocated the security could not handle the order flow, it may become necessary for the appropriate Allocation Committee to reallocate the security to a trading crowd or DPM with the capacity to do so. Similarly, if the trading volume at a trading crowd or DPM post greatly increased the number of crowd members or DPM personnel grew along with the increase in volume, it may become necessary for the appropriate Allocation Committee to relocate the trading crowd or DPM to a larger trading post.[6]

Proposed CBOE Rule 8.95(d) provides that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall generally give the affected trading crowd or DPM prior notice of the contemplated action and an opportunity to be heard concerning the action. The only exception to this requirement would be in those unusual situations when expeditious action is required due to extreme market volatility or some other situation requiring emergency action. Specifically, except when expeditious action is required, proposed CBOE Rule 8.95(d) requires that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall notify the trading crowd or DPM involved of the reasons the committee is considering taking the contemplated action, and shall either convene one or more informal meetings of the committee (or a committee panel) with the trading crowd or DPM to discuss the matter, or provide the trading crowd or DPM with the opportunity to submit a written statement to the committee concerning the matter. Due to the informal nature of the meetings provided for under proposed CBOE Rule 8.95(d) and to encourage constructive communication between the committee and the affected trading crowd or DPM at those meetings, ordinarily neither counsel for the committee nor counsel for the trading crowd or DPM shall be invited to attend these meetings and no verbatim record of the meetings shall be kept.

As with any decision made by the Allocation Committee and the Special Product Assignment Committee, any person adversely affected by a decision made by the appropriate Allocation Committee to remove an allocation or change a location may appeal the decision to the Exchange's Appeals Committee under Chapter XIX of the Exchange's Rules. The appeal procedures in Chapter XIX provide for the right to a formal hearing concerning any such decision and for the right to be accompanied, represented, and advised by counsel at all stages of the proceeding. In addition, any decision of the Appeals Committee may be appealed to the Exchange's Board of Directors pursuant to CBOE Rule 19.5.

Proposed CBOE Rule 8.95(e) provides that the allocation of a security to a trading crowd or DPM and the location of a trading crowd or DPM on the Exchange's trading floor does not convey ownership rights in the allocation or location or in the order flow associated with the allocation or location. Proposed CBOE Rule 8.95(e) is intended to make clear that trading crowds and DPMs may not buy, sell, or otherwise transfer an allocation or location to another party, and that instead, it is the Exchange which has the sole authority to determine allocations and locations on the Exchange's trading floor. It should be noted, however, that notwithstanding proposed CBOE Rule 8.95(e), Exchange rules will continue to permit the transfer of DPM appointments pursuant to CBOE Rule 8.80(b)(3) subject to Exchange approval.

Proposed CBOE Rule 8.95(f) is intended to reflect the current restrictions that are in place with respect to the allocation of securities to DPMs. Proposed CBOE Rule 8.95(f) reiterates the provision currently contained in CBOE Rule 8.80(a) that no option classes opened for trading prior to May 1, 1987, shall be allocated to a DPM, except to the extent authorized by a membership vote.[7] In addition, proposed CBOE Rule 8.95(f) contains a modification to the foregoing provision that was approved pursuant to an Exchange membership vote taken in November 1989. Under this modification, if a trading crowd indicates that it no longer wishes to trade an option class opened for trading prior to May 1, 1987, the option class may be reallocated to another trading crowd or to a DPM giving priority to trading crowd applications over DPM applications, provided that the trading crowd's commitment to market quality is competitive and that operational considerations are satisfied.

Proposed CBOE Rule 8.95(g) provides that in allocating and reallocating

[6] Once proposed CBOE Rule 8.95(c) has become effective, it will be necessary to delete existing CBOE Rule 8.80(b)(7).

Existing CBOE Rule 8.80(b)(7)(i) states that the MTS Appointments Committee may discontinue the use of a DPM in an option class if the trading activity in that class exceeds a predetermined volume. That provision is now superfluous because the CBOE membership voted in December 1993 to advise the MTS Appointments Committee not to exercise that authority. *See* Amendment 2, *supra* note 3.

Existing CBOE Rule 8.80(b)(7)(ii) permits the MTS Appointments Committee to discontinue use of a DPM in an option class if it determines that trading would be better accommodated by using a market-maker system without a DPM. Proposed CBOE Rule 8.95(c) will give similar authority to the appropriate Allocation Committee. *See* Amendment Nos. 2 and 3, *supra* note 3.

[7] In amendment No. 2, the Exchange proposed to delete CBOE Rule 8.80(a) to eliminate the redundancy between it and proposed CBOE Rule 8.95(f).

securities to trading crowds and DPMs, the appropriate Allocation Committee shall act in accordance with any limitation or restriction on the allocation of securities that is established pursuant to another Exchange rule. For example, the appropriate Market Performance Committee or the MTS Appointments Committee may take remedial action against a trading crowd or DPM pursuant to CBOE Rule 8.60 and CBOE Rule 8.80(b)(10) for failure to satisfy minimum market performance standards, and such action may involve a restriction related to the allocation of securities to that trading crowd or DPM. Similarly, the MTS Appointments Committee may place restrictions on a DPM's ability to receive or retain allocations of securities pursuant to various provisions of CBOE Rule 8.80, including as a condition of appointment as a DPM (CBOE Rule 8.80(b)(3)), due to failure to perform DPM functions (CBOE Rule 8.80(b)(4)(i)), or due to a material financial, operations, or personnel change (CBOE Rule 8.80(b)(4)(ii)). Proposed CBOE Rule 8.95(g) is intended to make clear that the appropriate Allocation Committee must act in accordance with any such restrictions in making allocation and location determinations.

Proposed CBOE Rule 8.95, Interpretation .01 generally provides that it shall be the responsibility of the appropriate Allocation Committee to reallocate a security in the event that the security is removed pursuant to another Exchange rule from the trading crowd of DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains the allocation. For example, as described above, CBOE Rules 8.60 and 8.80 authorize the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including the removal of an allocation. Proposed CBOE Rule 8.95, Interpretation .01 is intended to make clear that in the event the appropriate Market Performance Committee or the MTS Appointments Committee removes an allocation pursuant to CBOE Rule 8.60 or CBOE Rule 8.80, it is the responsibility of the appropriate Allocation Committee (and not the committee that took the action to remove the allocation) to reallocate the security pursuant to proposed CBOE Rule 8.95. The only exception to this provision is that the MTS Appointments Committee is authorized pursuant to CBOE Rule 8.80(b)(6) to allocate to an interim DPM on a temporary basis a security that is removed from another DPM, until such time as the appropriate Allocation Committee has made a final allocation of the security.

Finally, proposed CBOE Rule 8.95, Interpretation .02 provides that it shall be the responsibility of the Allocation Committee to relocate a trading crowd or DPM in the event that the trading crowd or DPM is required to be relocated pursuant to another Exchange rule. As has been discussed, CBOE Rule 8.60 and CBOE Rule 8.80(b)(10) permit the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including requiring that a trading crowd or DPM be relocated. Like with proposed CBOE Rule 8.95, Interpretation .01 proposed CBOE Rule 8.95, Interpretation .02 is intended to make clear that in the event the appropriate Market Performance Committee or the MTS Appointments Committee requires the relocation of trading crowd or DPM pursuant to CBOE Rule 8.60 or CBOE Rule 8.80(b)(10), it is the responsibility of the Allocation Committee (and not the Committee that took the action to require the relocation) to relocate the trading crowd or DPM.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest by providing for allocation procedures and policies that will ensure that securities traded by the Exchange are allocated in an equitable and fair manner and that all trading crowds and DPMs have a fair opportunity for allocations based on established criteria and procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–03 and should be submitted by April 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

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[10] 17 CFR 200.30–3(a)(12).